

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NOS. 271, 4232 TO 4265 OF 2000

For Approval and Signature:

Hon'ble MISS JUSTICE R.M. DOSHIT

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

AMARABHAI MONGHABHAI PARMAR

Versus

STATE OF GUJARAT

Appearance:

IN ALL THE MATTERS ::

MR DD VYAS with MR SUNIL C PATEL for Petitioners

NOTICE SERVED for Respondent No. 1, 3

MR PREMAL JOSHI with MR SP HASURKAR for Respondent No. 2

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 29/06/2000

ORAL JUDGEMENT

Heard the learned advocates. Draft amendment
dated 22nd June, 2000 is granted. The amendment shall be

carried out within one week from today.

Rule returnable today. The learned APP Mr. Joshi appears and waives service on behalf of the respondents. With the consent of the learned advocates, the petitions are finally disposed of by this common judgment.

All the petitioners herein are serving as Constables in the State Reserved Police Force, Group-V. It is the claim of the petitioners that they have passed the qualifying examination for further promotion to the post of Head Constable, Grade-II in the month of March 1990. However, they have yet not been promoted. In the meantime, another Batch of Constables have passed such qualifying examination in the year 1993. Though the petitioners have passed the examination earlier and are entitled to prior consideration for further promotion, ignoring their entitlement, the Constables who have passed the examination later, are being considered for promotion. Therefore the petition.

It is submitted that the Constables who have passed the qualifying examination earlier are entitled to preferential right to be considered for promotion over those Constables who pass such qualifying examination later.

The question that arises for consideration is whether passing of the qualifying examination also confers the right to seniority for the purpose of further promotion. The matter is no more res-integra. Considering the scheme of the relevant provisions of State Reserve Police Rules, 1959, and Rules 56 and 60 in particular, this court (i.e. myself) by its order dated 25th February, 2000, made on Special Civil Application No. 141/2000 has held that passing of the qualifying examination is a pre-requisite for being eligible for promotion. However, the same does not govern the seniority. It has been held that, "... This pre-supposes that promotion as and when made, shall be made from amongst the qualified candidates on the basis of seniority cum fitness. The date of acquiring eligibility, therefore, shall fall into insignificance. If by the time qualifying examination is held and the result is declared, the candidates who had passed the examination earlier have not yet been promoted, they should find their placement amongst all the eligible candidates, including those who have acquired eligibility later in accordance with their seniority inter-se. No

rule provides that the persons acquiring eligibility later shall stand below persons who had acquired the eligibility earlier. In absence of an express provision, the contention raised by Mr. Shukla can not be countenanced ".

Mr. Vyas has relied upon the Government Notification dated 3rd July, 1999. By the said Notification, the State Government has substituted Rules 56 and 57 of the Bombay State Reserve Police Force, 1959. Mr. Vyas has contended that this Amendment was not brought to the notice of the court earlier and it shall have bearing on the subject matter. The substituted Rule-56 reads as under :

- (1) Appointment to the post of Head Constable Grade-II, Head Constable Grade-I, Platoon Commander or Armed Police Sub Inspector shall be made -
 - (a) in case of Head Constable Grade II, by promotion of a person of proved merit and efficiency from amongst the persons working in the cadre of the constable on the basis of seniority.
 - (b) xxx xxx xxx
 - (c) xxx xxx xxx
- (2) To be eligible for appointment by promotion to posts mentioned in sub-rule (1), a candidate shall have passed the prescribed qualifying examination referred to in Rule-60.

In my view, the substituted Rule 56 shall not affect my earlier decision. It only strengthens the view which I have expressed herebefore. The promotions which were hitherto required to be made on the basis of seniority-cum-fitness are now required to be made on the basis of proved merits and efficiency. The unamended Rules were silent whether such promotions should be made in order of seniority or in accordance with the date of acquiring eligibility. It was, therefore, held that in absence of specific rule to the contrary, the seniority shall prevail. The substituted Rule 56 removes this ambiguity also. It expressly provides that the promotion should be made from amongst the eligible Constables on the basis of proved merits and efficiency in order of seniority. In view of this express provision, there is

no scope for claiming priority on the basis of date of acquiring eligibility. It is the seniority which shall govern the order of promotion from amongst the Constables of proved merit and efficiency and not the date of acquiring the eligibility i.e. date of passing of the qualifying examination. The claim of the petitioners for priority on the basis of the date of acquiring eligibility should, therefore, fail.

The petitions are, therefore, dismissed. Rule Nise issued in each of the petitions is discharged.

[Miss R.M Doshit, J.]

JOSHI*